

**Reserved****Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1312 of 2023**Thursday, this the 19<sup>th</sup> day of December, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Ex. Sgt. No. 792231T, Padmakar Pandey, S/o Jai Prakash Pandey,  
Resident of House No. 2G/R/5A, Kalindipuram, Rajrooppur, Post  
Office – Dhooman Ganj, District – Prayagraj (Uttar Pradesh).

**..... Applicant**

Counsel for the : **Shri Vinay Pandey**, Advocate  
Applicant **Shri Shashi Kant Chaturvedi**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, (Air Force), DHQ PO-New Delhi -11.
2. The Chief of the Air Staff, Air Headquarters, Directorate of Air Veterans, Subroto Park, New Delhi -110010.
3. Air Head Quarters, Directorate of Air Veterans, Subroto Park, New Delhi -110010.
4. Office of Jt. Controller of Defence Accounts (Air Force), New Delhi.

**.....Respondents**

Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Govt. Standing Counsel

## **ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *Issue/pass an order or direction of appropriate nature to respondents to consider the attributability/ aggravation of disabilities i.e. (ii) Subtrochanteric #Lt Feemur OPTD (Old) ICD No. S72.Z09 (iii) Lateral Tibial Condyle Lt (Old) ICD No. S72.Z09, due to Air Force Service for which the injury reports were initiated by the 38 Wg AF in the month of December 2013 and in the month of July 2014 respectively.*
- (b) *Issue/Pass an order or direction of appropriate in nature to grant the disability pension in respect of all disabilities with the benefit of rounding off i.e. 50% rounded off to 75%, in terms of Government of India Vide letter No 1(2)/97/I/D (Pen C) dated 31.01.2001.*
- (c) *Issue /Pass an order or direction of appropriate in nature to grant the benefit of rounding off of disability i.e. 20% to 50% in respect of 1<sup>st</sup> disability i.e (i) Lumber Spondylosis (Old) ICD No. 47.8.Z09 for which the applicant is in respect of disability pension, if, in case (ii) Subtrochanteric # Lt Feemur OPTD (Old) ICD No. S72.Z09 (iii) Lateral Tibial Condyle Lt (Old) ICD S72.Z09 disabilities are not considered as aggravated or attributable to Air Force Service for which the injury reports were initiated by the 38 Wg AF in the month of December 2013 and in the month of July 2014 respectively.*
- (d) *Issue/Pass an order or direction of appropriate nature to the respondents to make the payment of arrears of disability pension along with interest accrued to the*

*applicant and continue to pay the same from the next date of discharge i.e. 01 January 2020.*

*(e) Issue/Pass any other or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

*(f) Allow this application with costs.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Air Force on 16.12.1999 and discharged from service on 31.12.2019 in low medical category on fulfilling the conditions of his enrolment after rendering 20 years and 16 days of regular service. Before discharge from service, the Release Medical Board (RMB) held at 22 Wing Air Force on 17.02.2019 assessed his disabilities (i) **'LUMBER SPONDYLOSIS (OLD) ICD NO. 47.8, Z09'** @20% for life as **aggravated by Service**, (ii) **'SUBTROCHANTRIC #LT FEMUR OPTD (OLD) ICD NO S72, Z09'** @20% for life as neither attributable to nor aggravated (NANA) by service and (iii) **'LATERAL TIBIAL CONDYLE LT OPTD (OLD) ICD NO S 72, Z09'** @20% for life as NANA by service, **composite disabilities @50% for life**. Accordingly, the applicant was granted disability element of disability pension @20% rounded off to @50% for life for the first disability. But the applicant's claim for grant of disability element of disability pension for the second and third disabilities was rejected vide letter dated 30.07.2019. According to the applicant, the second and third disabilities of the applicant were occurred on 05.10.2013 and 09.05.2014 respectively at Bakshi Ka Talab while the applicant was on bonafide Air Force Duty and posted with 38 Wing,

Lucknow. The applicant has represented his grievances before the authorities but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that the first disability of applicant has been regarded as aggravated by service @20% for life by the RMB, hence, he was granted disability element of disability @20% rounded off to @50% for life. He further submitted that the second and third disabilities of the applicant were occurred on 05.10.2013 and 09.05.2014 respectively at Bakshi Ka Talab while the applicant was on bonafide Air Force Duty and posted with 38 Wing, Lucknow as such they are attributable to or aggravated by Air Force service. He submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, has held that if an armed forces personnel suffers with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited in the army, the said disability would be treated to be attributable to or aggravated by military service and he/she shall be entitled to the disability pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injuries (second and third disabilities) while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element of disability pension for the second and third disabilities also and its rounding off to @75%.

4. Per contra, learned counsel for the respondents submitted that since the applicant's first disability was regarded as aggravated by service, hence, the applicant was granted disability element of disability pension @20% for life which was rounded off to @50% for life. He further submitted that as per the applicant's statement on 05.10.2013 while applicant going to duty to transmitter building he slipped and fell down in front of bathroom of Air Force service quarters of Air Force Station, Bakshi Ka Talab and sustained injury in his left leg at thigh portion which ultimately resulted into second disability i.e. **'SUBTROCHANTRIC #LT FEMUR OPTD (OLD) ICD NO S72, Z09'**. Further, on 09.05.2014 after attending party (organized by applicant's RT Cabin Section, Near Fauji Dhaba, on Lucknow-Sitapur Highway) while applicant was coming for duty to Air Force Station Bakshi Ka Talab on bike as pillion rider his bike was hit by another bike which was coming from wrong side and applicant sustained injury in his left leg below knee portion which ultimately resulted into third disability i.e. **'LATERAL TIBIAL CONDYLE LT OPTD (OLD) ICD NO S 72, Z09'**. Ld. Counsel for the respondents further submitted that for grant of the disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injuries and military service. He further submitted that unless injuries sustained have causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on duty or disability was not reported/detected while being enrolled or commissioned. He further submitted that there

were no causal connection between the injuries sustained and military service and, therefore, applicant is not entitled to disability element of disability pension for the second and third disabilities, as he is claiming. In support, learned counsel for the respondents has placed reliance on the following case laws of the Hon'ble Apex Court:-

- (a) ***Renu Devi v Union of India and others***, Decided on July 03. 2019 in Special Appeal arising out of Diary No. C-37356 of 2017.
- (b) ***Vijay Kumar v. Union of India***, 2016 SCC 460.
- (c) The ***Secretary Govt of India & Others v. Dharamvir Singh*** Decided on 20, September 2019 in Civil Appeal No 4981 of 2012.

5. We have heard Ld. Counsel for the parties and have also perused the record.

6. After having heard the submissions of learned counsel of both sides we found that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the army on 16.12.1999 and discharged from service on 31.12.2019 on fulfilling the conditions of his enrolment. The applicant's first disability was assessed @20% for life as aggravated by service, as such the applicant was granted disability element of disability pension @20% which was rounded off to @50% for life. Further, as per the applicant's himself statements, on 05.10.2013 while he was going to duty to transmitter building he slipped and fell down in front of bathroom of Air Force service quarters

of Air Force Station, Bakshi Ka Talab and sustained injury in his left leg at thigh portion which ultimately resulted into second disability i.e. **'SUBTROCHANTRIC #LT FEMUR OPTD (OLD) ICD NO S72, Z09'** and on 09.05.2014 after attending party (organized by applicant's RT Cabin Section, Near Fauji Dhaba, on Lucknow-Sitapur Highway) while applicant was coming for duty to Air Force Station Bakshi Ka Talab on bike as pillion rider his bike was hit by another bike which was coming from wrong side and applicant sustained injury in his left leg below knee portion which resulted into third disability i.e. **'LATERAL TIBIAL CONDYLE LT OPTD (OLD) ICD NO S 72, Z09'** vide Release Medical Board report dated 17.02.2019 and his second and third disabilities were assessed at @20% each for life, the disability claim of the applicant was rejected for the second and third disabilities.

7. The respondents have denied disability element of disability pension to the applicant for the second and third disabilities on the reasons that for getting disability element of disability pension, in respect of injuries sustained during the course of employment, there must be some causal connection between the disabilities/injuries and military service, and this being lacking in applicant's case, as there were no causal connection between the second and third disabilities and military service, he is not entitled for the disability element of disability pension for the second and third disabilities.

8. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the

Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat v. Union of India & Ors**, (1999) 6 SSC 459 was allowed by the Tribunal holding that



respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?.

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?.

9. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“ In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever

remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

11. Regarding question number 3, the Hon’ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon’ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

12. The Hon’ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case,

and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

*“(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.*

*(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*

*(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.*

*(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.*

*(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At*

*best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior”.*

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

13. We have considered the applicant's case in view of above guiding factors and we find that the applicant has filed his statements as Annexure No. A-4 of the Original Application i.e. at page 35 and 36 which itself shows that on 05.10.2013 while the applicant going to duty to transmitter building he slipped and fell down in front of bathroom of Air Force service quarters of Air Force Station, Bakshi Ka Talab and sustained injury in his left leg at thigh portion which ultimately resulted into second disability i.e. **‘SUBTROCHANTRIC #LT FEMUR OPTD (OLD) ICD NO S72, Z09’** and on 09.05.2014 after attending party (organized by applicant's RT Cabin Section, Near Fauji Dhaba, on Lucknow-Sitapur Highway) while applicant was coming for duty to Air Force Station Bakshi Ka Talab on bike as pillion rider his bike was hit by another bike which was coming from wrong side and applicant sustained injury in his left leg below knee portion which resulted into third disability i.e. **‘LATERAL TIBIAL CONDYLE LT OPTD (OLD) ICD NO S 72, Z09’**. The activities in which the applicant sustained injuries being not

connected with his military duties in any manner, he is not entitled to the disability element of disability pension for the second and third disabilities/injuries.

14. In the result, we hold that the claim of applicant's disability element of disability pension for the second and third disabilities has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is **dismissed**.

15. No order as to cost.

(Lt. Gen. Anil Puri)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated: 19 December, 2024

AKD/-